IN THE HIGH COURT UTTARANCHAL AT NAINITAL.
Criminal Misc. Application No. 7188 of 1993 – Old number.
Criminal Misc. Application No. 136 of 2002- New number.

CRIMINAL SIDE:-

D.S. Sharma ……Applaiant
Versus
State of U.P. and another ……..Respondents.

Hon'ble Irshad Hussain, J.

Heard Sri Lokendra Dobhal learned counsel for the petitioner and the learned Standing Counsel for the respondent. This is a petition U/s 482 of the Code of Criminal Procedure for quashing the the summoning order dated 2.2.1989 passed U/s 204 Code of Criminal Procedure, passed against the petitioner in criminal complaint case No. 1387 of 1988.

The complaint was filed by respondent No.2 with the allegations that he purchased an ambassador car No. D.H.C. 2506 from the Sri S.D. Sharma for a price of Rs. 35,000-00 on 13.3.87 and on that day the seller had promised that he will deliver the documents of the vehicle so that the same may be transferred in the name of the purchaser complainant. On this promise the vehicle was purchased and the price of the same was paid to the petitioner-accused. he had however not delivered the documents and the registration of the vehicle could not be made in the name of the purchaser-respondent No.2. The complaint was filed with the allegations that the petitioner-accused knew that the registration of the vehicle was in the name of third person named as Chitranjan Swaroop and the same could not at the time of the sale be transferred in the name of the purchaser complainant Suresh Chandra Kandpal and thus he had cheated him and thereby made to part with the money as price of the said vehicle.

Considering the material on record and the statements recorded U/Ss 200 and 202 Cr.P.C. the summoning order was passed by the learned Magistrate which has been assailed in this petition.

Learned Magistrate has also taken note of the fact that the complainant had even sent a notice through counsel so that the documents of the vehicle could be delivered and the same could have been transferred in the name of complainant purchaser but no heed was paid to the same also. When the vehicle was sold the documents were admittedly not given and though promise was made to this effect. Considering that the vehicle was in the name of the third person and the seller petitioner was not in possession of the documents of the said vehicle he had prima facie intended to cheat the purchaser and deceived him to part with the money in regard to the said transaction. Considering these aspects a prima facie case against

the petitioner was made out for on offence U/Ss 418/420/424 I.P.C. and he was rightly summoned by the learned Magistrate to stand trial for these offences. Considering all these aspects there is no merit and substance in this petition and the same is dismissed. The stay order is vacated.

(Irshad Hussain, J.)

Dt. 6.8.2003

ISB